



# City of Tigard Memorandum

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To: Mayor Cook and Honorable members of the City Council

From: Liz Newton, Assistant City Manager  
Gary Pagenstecher, Associate Planner

Date: February 5, 2015

Re: Background Annexation Report for July 17th Workshop Discussion

## Introduction

Annexation is used to incorporate territory into the city to ensure the efficient provision of municipal services and to incorporate urbanizing lands into the city. Experience has shown that property owners are often reluctant to annex when they have access to urban services and benefits; those provided by the county and service districts and those located within Tigard such as parks, library, employment and shopping opportunities. City Council's goals for 2015 identify issues for further discussion including annexation strategy.

The purpose of this report is to provide background information for Council's discussion. The report aims to provide legal, historical and policy context for deliberation and decisions to revise or reaffirm Tigard's annexation strategy.

This report includes information on:

1. The legal framework for annexation established in state statute and the city's intergovernmental agreements, comprehensive plan, development code, and administrative procedures;
2. The history of the city's annexations from incorporation in 1961 to the present;
3. Unincorporated territory within the city's boundary (islands) and large urban unincorporated areas including process and incentives;
4. The effect on city assets and services including finances, public safety, and infrastructure.

## Legal Framework

The city's policies on annexation are based on state law and are found in the Comprehensive Plan. These policies are implemented through the Tigard Development Code and ordinances approving several Intergovernmental Agreements (IGAs). These IGAs are primarily between the city and Washington County, but also include the city and Metro and a number of service provider districts such as Tigard Water District, Clean Water Services for sewer and storm sewer service and Tualatin Valley Fire and Rescue.

## State Law

Oregon state law contains a number of regulations related to annexation.

## Limitations on Annexation

A city may only annex territory that is contiguous to the city unless, the territory to be annexed is separated from the city by a public right of way or a body of water (ORS 222.111(1)). Additionally, case law imposes a requirement that annexations must be reasonable. Factors which courts consider in determining if an annexation is reasonable include:

- The contiguous properties represent the actual growth of the city beyond its boundaries;
- The properties are valuable because they can be put to city uses; and the properties are needed for the extension of city streets or services.

A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by petition to the legislative body of the city by owners of real property in the territory to be annexed (ORS 222.11(2)).

#### Election-Based Annexation

Unless otherwise provided for under state law, annexations require an election. The statutory exceptions are addressed in the sections below. In the absence of an exception, a vote in the territory to be annexed and the annexing city is required. When an election is required, a majority of the electors in the city and in the annexing territory must approve the annexation (ORS 222.160). The two elections do not need to take place concurrently, but cannot be more than 12 months apart (ORS 222.111(6)). One policy reason for having separate elections is that it can be more efficient to have the smaller election in the territory first, to see if it passes, and only then have a more costly citywide election. The City of Tigard used a concurrent election process in 2004 in attempting to annex the unincorporated Bull Mountain area. In general, other than the West Bull Mountain and Metzger annexations, Tigard's experience has primarily been with consent annexations, which are described in the next section.

#### Consent-Based Annexation

State law allows annexation without an election when certain consent of the property owners is obtained. Three such consent standards are 100% landowner consent, double majority, and triple majority. The city has relied on these consent annexations for annexations related to adjacent properties needing city services in order to develop.

- Annexation may occur with the consent of 100% of the landowners and not less than 50% of the electors living in the territory to be annexed. (ORS 222.125)
- A double-majority annexation may occur without election if there is written consent from;
  1. more than half of the electors in the territory to be annexed, and
  2. more than half of the owners of land in the territory to be annexed (ORS 222.170(2)).
- A triple-majority annexation may occur without election if there is written consent from;
  1. more than half of the landowners in the territory to be annexed,
  2. who own more than half of the land in the territory to be annexed, and
  3. who represent more than half of the assessed value in the territory (ORS 222.170(1)).

#### Island Annexation

A city may annex unincorporated territory that is surrounded by the city. Such territories are often referred to as "islands," and may be unilaterally annexed without consent of the owner(s).

A property is surrounded if it is bounded by the city on all sides, or by the city and a body of water or Interstate 5 (ORS 222.750(2)). The city's Walnut Street Island was annexed in this manner.

#### Intergovernmental Agreements (IGA)

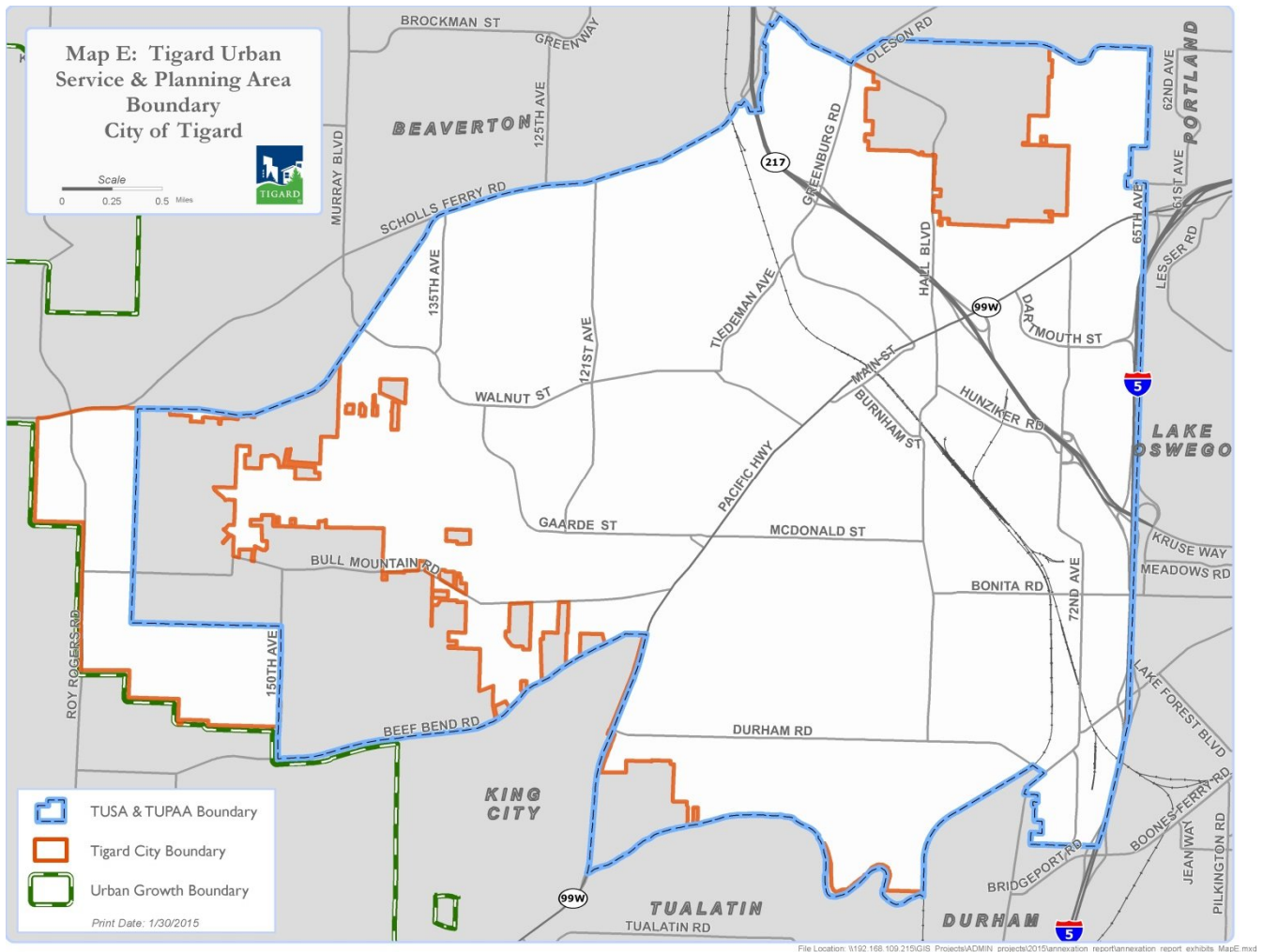
Several Intergovernmental Agreements are relevant to the city's expansion into areas added to or within the Urban Growth Boundary (UGB). An Urban Planning Area Agreement and Urban Services Agreement are both required by state law

Statewide Planning Goal 2 requires city, county, state, federal agency and special district plans and actions to be consistent with city and county comprehensive plans and regional plans adopted under ORS 197. This goal also requires the comprehensive plans to be coordinated for the efficient transition of land to urban uses. To achieve this, the Oregon Land Conservation and Development Commission requires each jurisdiction to submit an agreement setting forth the means by which comprehensive planning coordination within the regional urban growth boundary will be implemented.

The City of Tigard has operated under an Urban Planning Area Agreement (UPAA) with Washington County since 1983 that recognizes Tigard as the ultimate governance provider within the Urban Planning Area (UPA). However, almost all of the unincorporated area has been urbanized by Washington County. The current UPA encompasses the unincorporated areas of Bull Mountain and Metzger, but does not include the 2002 West Bull Mountain additions to the UGB (Areas 63 and 64).

An Urban Services Agreement, which is required by ORS 195, ensures the county, city, and special districts can effectively plan for and provide a continued, adequate level of urban services into the future. The agreement outlines the roles and responsibilities for planning, constructing, maintaining and coordinating urban services to a defined area. The current Tigard Urban Services Agreement (TUSA), which was initially created in 2002 and last updated in July 2006, identifies Tigard as the ultimate governance provider to the UPA. Updates to the TUSA are initiated by Washington County and all the signing agencies must concur with any proposed changes.

The area covered by the TUSA coincides with the UPA but no longer encompasses all of the city's incorporated area as shown in Map E: TIGARD URBAN SERVICES & PLANNING AREA BOUNDARY.



The Urban Planning Area Agreement acknowledges the TUSA and specifies a process for coordinating comprehensive planning and development.

#### Section III.C.1 Annexations, states:

The county and city recognize the City as the ultimate service provider of the urban services specified in the Tigard Urban Services Agreement. The County also recognizes the City as the ultimate local governance provider to all the territory in the TUSA, including unincorporated properties. So that all properties within the TUSA will be served by the City, the County and City will be supportive of annexations to the City.

#### Section III.C.3 states:

... Annexations to the City ... shall not be limited to an annexation plan and the City and County recognize the right of the City and property owners to annex properties using the other provisions provided by the Oregon Revised Statutes.

The 2002 TUSA language calls for the City and County to be supportive of annexations to the city over time and included a 12 month schedule to annex the Bull Mountain and Metzger areas. These agreements provided the foundation for the city's West Bull Mountain annexation initiative.

In March of 2012, council approved the Coordination in Urbanizing Areas and Transfer of County Road Ownership Intergovernmental Agreement and the Assignment of Rights and Delegation of Duties under Construction Excise Tax Grant to advance the River Terrace Community planning effort.

### **Tigard Comprehensive Plan**

The Comprehensive Plan policies provide for, but do not facilitate annexation. The city's annexation policy is included within the Urbanization goal of its Comprehensive Plan. The Urbanization goal is mandated by state statute. It provides a framework within which all development activities are coordinated. The goal attempts to integrate and balance available land resources in terms of the needs expressed by other Comprehensive Plan goals, namely, Housing, Economy, Public Facilities and Services, Natural Features and Open Space and Transportation. Tigard's Comprehensive Plan Urbanization Goals include:

Goal 14.1. Provide and/or coordinate the full range of urban level services to lands and citizens within the Tigard City limits.

Goal 14.2. Implement the Tigard Urban Services Agreement through all reasonable and necessary steps, including the appropriate annexation of unincorporated properties.

Goal 14.3. Promote Tigard citizens' interests in urban growth boundary expansion and other regional and state growth management decision.

### **Tigard Development Code (TDC)**

The TDC Chapter 18.320 implements the policies in the Comprehensive Plan. Annexation is processed using a Type IV procedure, which requires a public hearing before City Council and includes approval criteria requiring a) services and facilities are available to the area with sufficient capacity to provide service for the proposed annexation area, and b) the applicable comprehensive plan policies and implementing ordinance provisions have been satisfied. The code also includes a conversion table (Table 18.320.1) which assigns city comprehensive plan and zoning designations to annexing parcels.

### **Tigard Annexation History**

The City Of Tigard was incorporated in 1961. A dearth of information on the first 20 years makes tracking annexations difficult during that period. The city made a push to annex a number of islands during the early 1980s in the vicinity of McDonald/Gaarde adding 2,200 residents primarily through annexation from 1981 to 1982. The South Metzger annexation was approved by voters on March 31, 1987 which contributed to a one-year population increase of over 2,200. Map A: ANNEXATION OVER THE YEARS, picks up where information is readily available in 1984 and shows the areas added to the city each decade thereafter. Table 1 correlates with the map, detailing the number of annexations and aggregate acres added to the city each decade, including River Terrace in 2011 and 2012.

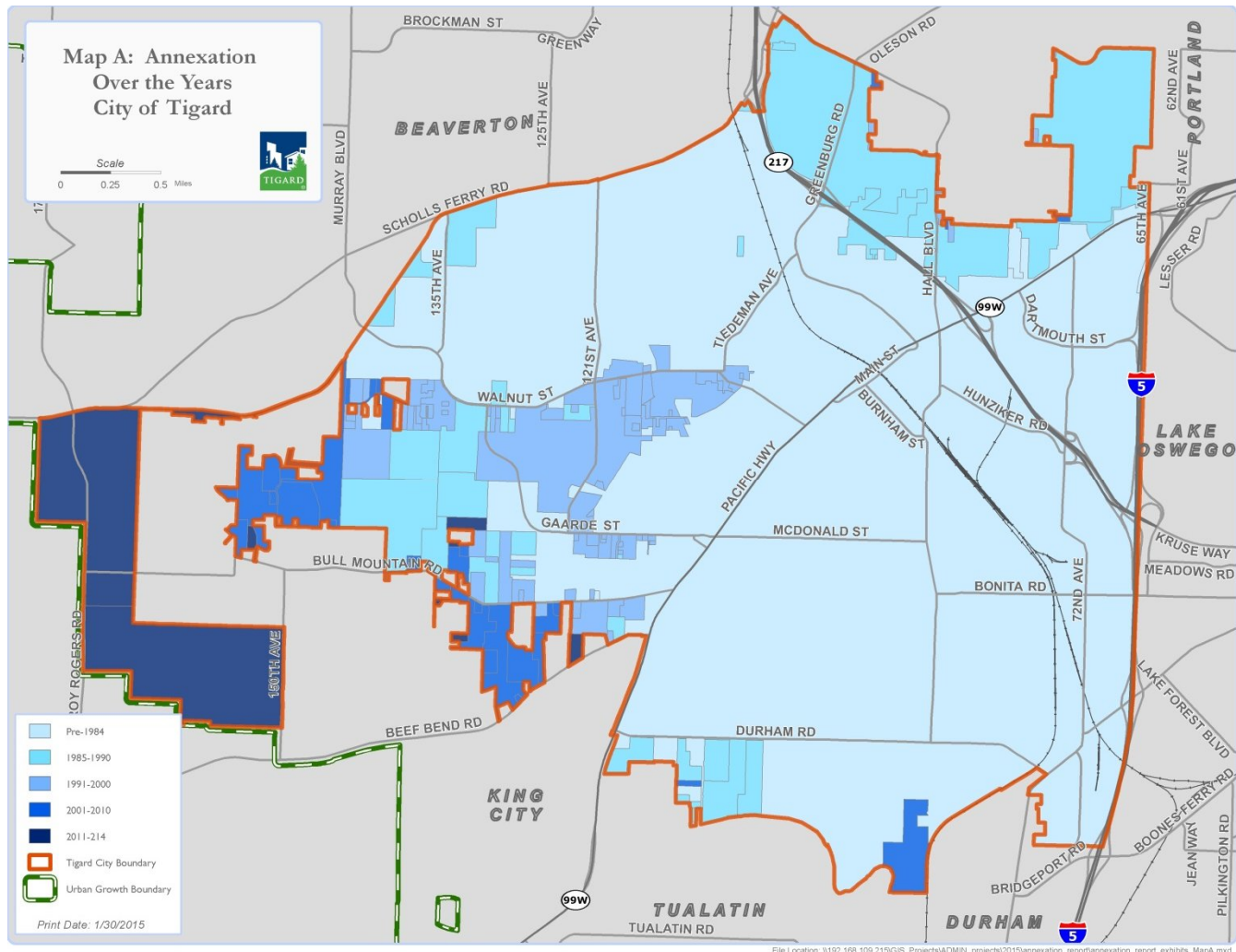


Table 1 : Annexation Over The Years

Decade	No. of Annexations	Acres
1984-1990	44	1,143
1991-2000	82	533
2001-2010	26	312
2011	11	527.73

### Walnut Island Annexation

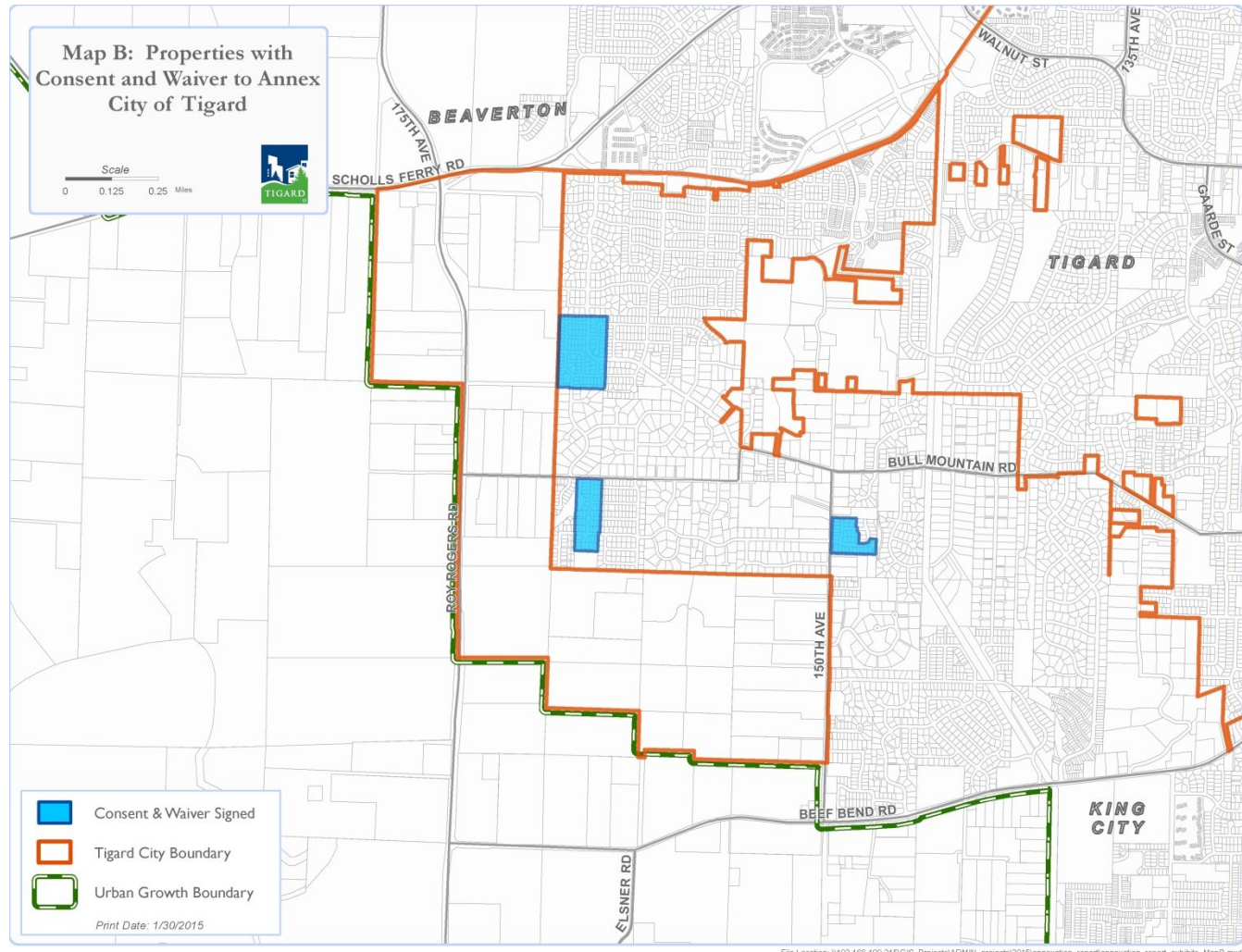
In 2000, the City annexed 15 islands of unincorporated Washington County land into the City of Tigard. Combined, the 15 areas include 496 lots and 310 acres of land located generally north of SW Gaarde Street, south of SW Walnut Street, and west of SW 114<sup>th</sup> Avenue. Notice of the proposed annexation was sent to property owners in the areas under consideration for annexation, as well as the property owners within 500 feet of those areas, which generated little comment and no controversy. Staff received four (4) letters; three (3) in opposition to the annexations and one (1) in support of the annexations, and an email in support of the annexations.

### West Bull Mountain Annexation

From 1997 until 2006, the city provided planning and development services for the county in the unincorporated West Bull Mountain area. When property owners contiguous to the city boundary applied for annexations, simple consents were sufficient. However, when property owners applied for development of property within the Urban Services Area, but which were not contiguous to the current city boundary,



contracts and waivers were used to ensure annexation at some point in the future when the city boundary becomes contiguous. Written consent to annex, an annexing procedure without a vote, included obtaining consents to annex by a willing property owner by contract in exchange for provision of services. The consents are binding on future property owners and good for a year, unless separate agreement waives the year limitation. Three (3) subdivisions, comprising 20.8 acres and 171 properties, are subject to these prior consents and waivers as shown in Map B: PROPERTIES WITH CONSENT AND WAIVER TO ANNEX.



With the annexation of River Terrace in 2011, the Tuscany Subdivision is now contiguous to the current city limits. In 2003, the owner of the property signed a waiver of the one year time period. (copy attached). The Council should determine how to proceed regarding annexation of this property.

In 2004, the west border of Tigard was separated from the 2002 UGB Expansion Areas (63 and 64) by the unincorporated Bull Mountain area containing urban level development. At the same time, Metro and Washington County were indicating a preference for urbanization to occur within cities to ensure adequate provision of urban services. The city put forward to voters a plan to annex the unincorporated Bull Mountain area within the TUSA. City of Tigard residents overwhelmingly passed the measure, but residents in the area to be annexed soundly defeated it, thus leaving the status quo.

In 2006, an incorporation effort took place to form the City of Bull Mountain and was turned down by West Bull Mountain voters.

### City Administrative Policies to Encourage Voluntary Annexation

Since 2000, the city's administrative policy on annexation has included sending a letter of solicitation to owners in the vicinity of a proposed annexation. The city encourages participation by offering to waive the annexation application fee for owners who joined. These solicitations occasionally resulted in joiners. Solicitations by the city also advise that if an owner chooses not to participate, but a majority of the surrounding neighbors did choose to do so, their property may involuntarily be annexed by double or triple majority. Involuntary annexation has rarely occurred.

Since March, 2007, the city has promoted voluntary annexation with a city property tax phase-in and the appeal of being part of a municipal community. In addition, Council has annually passed continuing resolutions to encourage voluntary annexation through additional financial incentives including waiver of fees such that the process is now essentially free. Resolution No. 14-10, passed by council in February of 2014, continues the financial incentives to annex until February 2015.

The incentive policy has had little success to date and requests to annex have been related mostly to development activity. Between April 2007 and January 2014 the city processed 17 annexations uninitiated by private property owners totaling approximately 576 acres. Over the seven year period that the incentives have been in place, the city has foregone and spent about \$46,500. Additionally, it is estimated that the city did not receive about \$75,258 in property tax revenue, including \$66,628 from Areas 63 and 64, over the same period.

### Island Annexation Initiative

In 2009, Washington County, through informal communication with Tigard, urged annexation of unincorporated islands within the city limits to resolve County service inefficiency issues. (See Table 3, Unincorporated Island Area Profiles, and Map D, EXISTING UNINCORPORATED ISLANDS, in the Islands of Unincorporated Territory section, page 13.)

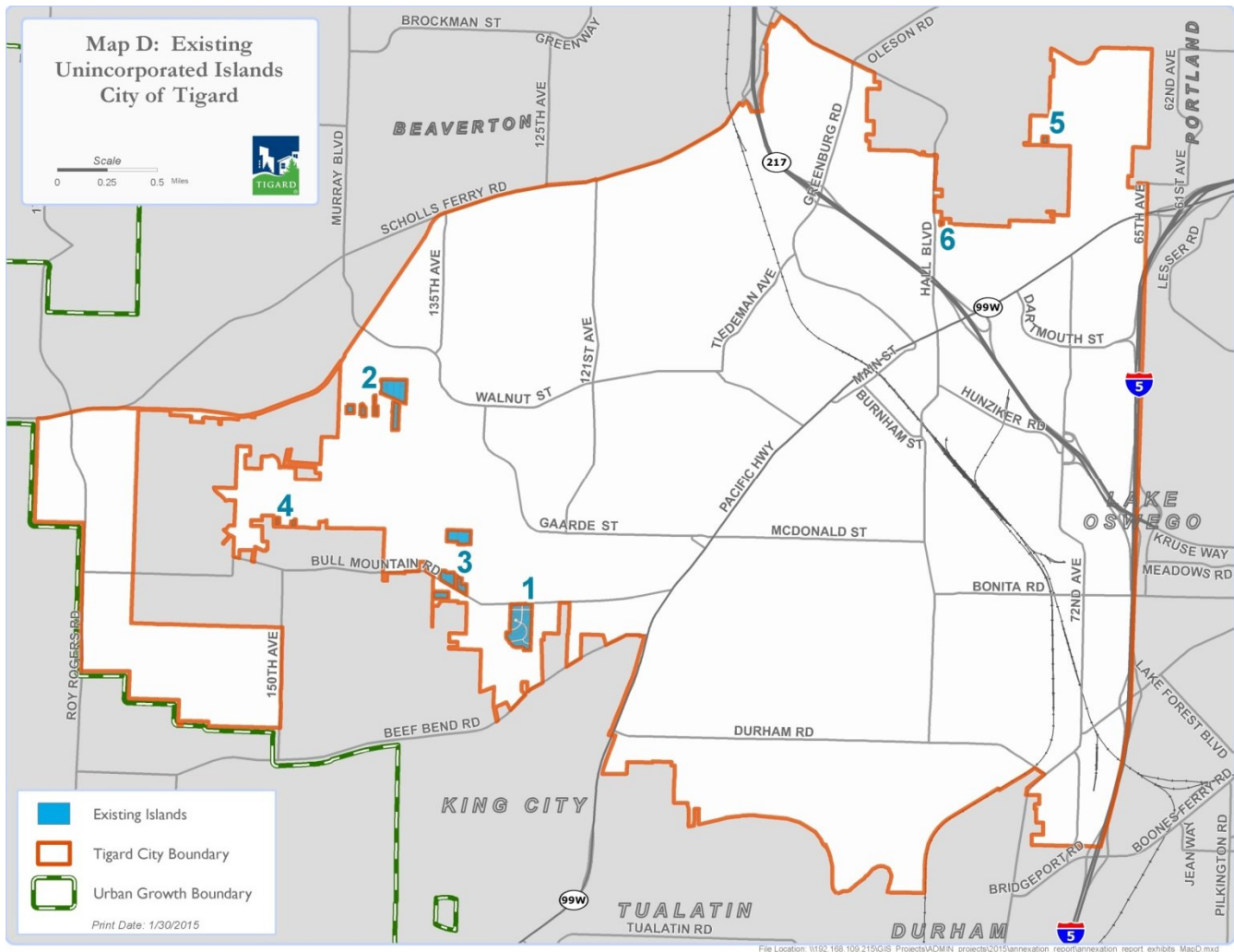
At the August 18, 2009 City Council Workshop, Council discussed options to initiate involuntary annexation of all unincorporated islands within Tigard. Council gave staff direction to develop an approach including amending the City's annexation policy to initiate involuntarily annexation within one year. Council also directed staff to design an outreach plan including personal contact with property owners to discuss individual issues and give island area property owners the opportunity to annex voluntarily before implementing the involuntary approach. Council also indicated that explicit support from Washington County should be sought before implementing a more aggressive approach to island annexation. This effort concluded in February, 2010 when the County declined to provide written support for a process for island annexation that could include involuntary annexations.

At the August 21, 2012 City Council workshop, there was Council consensus to complete annexation of the areas now known as River Terrace and provide incentives to these property owners. Council did not provide direction on the annexation of island areas or developed extraterritorial annexation areas. Absent specific direction from council, staff is not actively pursuing the annexation of unincorporated islands.

### Islands of Unincorporated Territory

There are 13 islands comprised of 72 properties totaling 33.8 acres of unincorporated Washington County territory within the City's boundaries.





These island areas can be categorized into four general areas where there is more than one property, as shown on Map D: EXISTING UNINCORPORATED ISLANDS, and profiled in Table 3, Unincorporated Island Area Profiles.

Table 3: Unincorporated Island Area Profiles

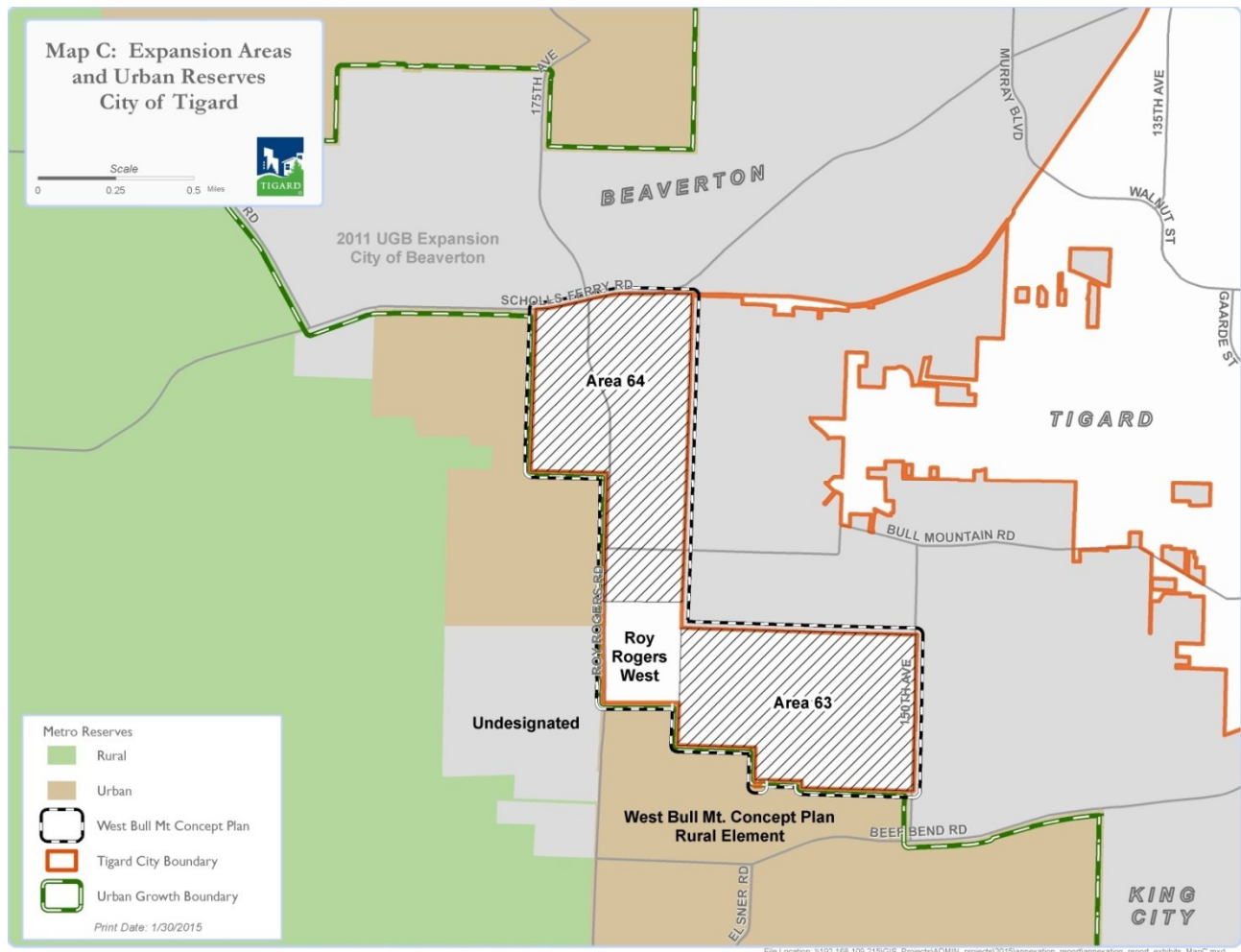
Map	Island Area	Island #	# of Acres	# of Properties	Zone	Lot Potential <sup>[1]</sup>
1	Arlington Heights	1	15.34	54	R-7	85 (54 actual)
2	Fern Street	5	13.61	12	R-7	76
3	Bull Mountain North	3	2.87	2	R-7	15
4	Sunrise Lane	2	1.06	2	R-7	6
5	7505 Landau Street	1	.59	1	R-4.5	2
6	8540 Spruce Street	1	.33	1	R-12	3

<sup>[1]</sup> Lot potential is calculated on 80% of gross area of property multiplied by the number or units per acre allowed in the zone; actual number of lots would be based on net developable area, which would likely yield significantly fewer lots (e.g. 63% of calculated lot potential for Arlington Heights due to sensitive areas).

In January 2010, Council reviewed a draft approach to initiate involuntarily annexation of island territories within one year. This included an outreach plan involving personal contact with property owners to discuss individual issues and give island area property owners the opportunity to annex voluntarily before implementing the involuntary approach. Without written County support for island annexation, Council concluded the initiative.

#### Urban Growth Boundary (UGB) Expansion Areas and Urban Reserves

Map C: EXPANSION AREAS AND URBAN RESERVES shows Areas 63 and 64 that were added by Metro to the Urban Growth Boundary in 2002 and the recently designated reserves areas. UGB expansion areas and Tigard's urban reserves lie west of Bull Mountain, south of Scholl's Ferry Road generally along both sides of Roy Rogers Road. A concept plan for the two expansion areas and the rural element area was developed by Washington County in collaboration with stakeholders and local residents. The plan was approved by the Washington County Commission in 2010. The City of Tigard was acknowledged as the most feasible provider of urban services to the area.



### River Terrace (UGB Expansion Areas 63 and 64)

In September 2011, the Tigard City Council voted unanimously to approve an owner initiated request to annex Area 64, approximately 200 acres in size, along with a utility corridor linking the area to the city boundary. This was approved through a triple majority annexation. Property owners in the area wished to obtain urban services necessary for development of their property.

In October 2011, Metro Council voted to expand the Metro UGB and included a 49-acre area just south of Area 64, called Roy Rogers West, which provided connectivity for infrastructure between Areas 63 and 64. Area 63 and Roy Rogers West were annexed into the city in October 2012. After an 18-month planning process involving stakeholders and partner agencies, the City Council adopted the River Terrace Community Plan. The adoption of zoning and development regulations this spring will provide guidance for development set to begin later this year.

### Annexation of Urban Unincorporated Areas

Unincorporated Bull Mountain and unincorporated Metzger are within the city's Urban Planning Area. (See Map E on page 4.) As noted in earlier sections of the report a large portion of Metzger, including Washington Square, was annexed in the 1980's. Efforts to annex the remaining urban unincorporated areas of Bull Mountain in 2004 were unsuccessful.

In order to assess the financial and service impacts of the annexation of either Metzger or Bull Mountain, a Public Facilities and Services Assessment Report will need to be prepared. Both studies look at a variety of factors including the costs of direct service to the area and revenues that would be generated to pay for those services. If council directs staff to conduct the analysis and prepare the reports for either Bull Mountain or Metzger, work could begin late in 2015 with the work completed by the end of June 2016.

## City/County Coordination on Annexation

Several annexation applications have been received by the city recently that raise questions of City/County coordination to ensure that development in unincorporated lands contiguous to the city is consistent with planning objectives within the city. In one case, the applicant sought and obtained subdivision entitlements from the County for property adjacent to the city boundary that needed access to the city storm system to be approved. In another case, lot line adjustments for property adjacent to the city were obtained in the County to reconfigure the parcels prior to annexation to the City to achieve outcomes beneficial to the developer and property owners that constrain the city's ability to ensure street connectivity in the neighborhood. To avoid these potential conflicts in the future, staff would recommend amending the Urban Planning Area Agreement to ensure a more coordinated approach.

## Summary of Issues Affecting City Assets and Services Including Finances, Public Safety, and Infrastructure

Both city assets and city services are affected by annexations; the key ones are described below.

### Financial Implications of Annexation

The City of Tigard Finance Department indicates that if council changes its annexation policy the Department and the city's finances will be affected both from a revenue and a cost side. It is estimated that the additional property taxes generated if the islands are annexed would be about \$50,000 per year

In addition, Building, Street Maintenance Fee, and Storm Funds would see nominal increases in revenue due to development activity. Planning fees are included in General Fund revenues. Future costs associated with Sanitary Sewer and road construction are difficult to quantify due to varying economic factors that are unknown at this time.

Any increased workload in Finance and Information Services would occur in Utility Billing as it relates to meter reading and billing for those areas that are not currently receiving services. In addition, Financial Operations will see a slight increase in workload due to any possible infrastructure financing resulting from the creation of Local Improvement Districts (LID).

### Potential Impacts of Annexation on the Police Budget

With annexation of River Terrace and the potential of island annexations taking place during the near future it will be a major challenge for the Tigard Police Department to maintain the same level of service and response time with the budget reductions made in FY 2012-13. The analysis completed at the time of the annexation of Area 64 showed that at build-out that area alone would bring an additional 2,760 to 3,542 new residents. The department, before the FY2012-13 budget reductions, was staffed with sworn officers at 1.22 officers per thousand. The goal at that time was to eventually reach the goal of 1.5 officers per thousand. That would better position the department to at least be prepared for island annexations as they take place. However, with the projected population growth in Area 64 and the future impact of Area 63, the department will be faced with attempting to provide the same level of service at a ratio of less than one officer per thousand, well below the national standard for a city the size of Tigard. Just annexing the unincorporated islands would dilute strength and potentially response time depending on increase in calls for service, especially with budget reductions. Quantifying impacts with specific numbers would be difficult.

### Potential Impacts of Annexation on the Public Works Budget

We know from past experience that the city has often had to find funds to bring services, such as streets and parks, up to municipal standards when County urbanized lands are annexed. Also associated with annexation is the demand for maintenance and operation. Typically maintenance requirements increase when annexed areas are underserved or have substandard public infrastructure that is often in constant

need of repair. Prior to identifying operation and maintenance needs the water, sewer, storm and street systems should be included in the Master Planning of each system. This is especially true for areas like River Terrace while island annexations are usually already included in current master planning efforts.

The area being considered may have need for pump stations, reservoirs and transmission lines. These should be identified in a Water Master Plan that covers a 20-year CIP and a list of projects.

The sanitary sewer and storm sewer improvements are a joint consideration between City of Tigard and Clean Water Services. The development of reimbursement districts, SDCs and rates should be developed prior to annexation and should be part of the Master Planning efforts.

In general, as annexations occur, PW's workload increases, both from an operational perspective and from engineering planning. Operationally, annexations increase the lineal footage of streets and utilities, thereby adding to the maintenance workload of our staff. Thus, we have to factor those increases into our work planning and division budgets. The Pavement Management Program (PMP) is also revised to include these streets in future pavement work.

#### Future Annexation of County Roads

Annexation of unincorporated territory does not transfer jurisdiction of county roads to the city. Transfer of road jurisdiction is a separate action. For annexations of a few parcels or one subdivision the impact on the city's ability to fund street maintenance will be minor unless the roads transferred are in disrepair. For large areas, such as unincorporated Bull Mountain and Metzger, the impacts could be challenging. A Services Assessment Report will be an important tool to assess the impacts.

#### Summary

This report provides background information for the council discussion about annexation strategy and policy. At the February 10, council meeting, staff will summarize the report and be prepared to answer questions.